

JOHN SILVA

IBLA 81-670

Decided October 26, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, which declared affidavit filings to be ineffective and which denied a request for reconsideration of a prior decision which had declared a mining claim to be abandoned and void. OR MC 25659.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper Bureau of Land Management office before such date.

APPEARANCES: John Silva, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John Silva appeals from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 1, 1981, which declared affidavit filings to be ineffective and which denied a request for reconsideration of a prior decision which had declared the Little mining claim (OR MC 25659) to be abandoned and void. The abandonment decision had been issued by BLM on August 18, 1980, and the claim had been declared abandoned and void because no affidavit of assessment work performed (proof of labor) or notice of intention to hold the claim was filed with BLM on or before October 22, 1979.

In his statement of reasons for appeal, appellant asserts that he filed a notice of intention to hold the claim on October 14, 1979; that no notice of assessment work was sent with the letter since he had more assessment work to do; that after completion of the work, he sent the proper evidence of assessment work, but that he cannot find his records of proof of labor for 1979; and that the filing requirements for 1980 were sent by him to BLM. Appellant states that his proof of labor was recorded in Oregon.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, on or before October 22, 1979, file, with BLM, evidence of annual assessment work performed during the previous assessment year, or alternatively, a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The record shows that a claim filing was sent by appellant on October 14, 1979, and was received by BLM on October 17, 1979. The filing included a \$5 service fee, a copy of appellant's location notice, and a letter which stated, "This is location of our mining site we wish to file with you to let you know our intention of holding the claim." No 1979 proof of labor was received with the filing nor is there evidence that a proof of labor had been filed separately on or before October 22, 1979. Further, the statement contained in appellant's letter which was filed on October 17, 1979, was not sufficient to meet the requirements established by regulation, 43 CFR 3833.2-3(a)(1) to constitute a notice of intention to hold the mining claim. Since no proof of labor was received, and the letter of notice was unacceptable, BLM properly issued the decision of abandonment dated August 18, 1980.

[2] Appellant's asserted mailing of evidence of annual assessment work is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before the due date. The Board has repeatedly held that a mining claimant,

having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Although appellant filed a proof of labor in August 1980 for work done in July of that year, there is no evidence that BLM ever received any other proof of labor done at a time previous.

When appellant failed to file an affidavit of assessment work or a qualifying notice of his intention to hold the claims, BLM properly held the claims to have been abandoned and declared them void. Don Sagmoen, 50 IBLA 84 (1980); Victor DeLange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); and Public Service Company of Oklahoma, 38 IBLA 193 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

